



# Punjab Government Gazette

*Published by Authority*

---

No. 51] CHANDIGARH, FRIDAY, DECEMBER 17, 2021 (AGRAHAYANA 26, 1943 SAKA)

---

## PART I

### STATE ELECTION COMMISSION, PUNJAB

S.C.O. No. 49, Sector-17 E, Chandigarh

#### NOTIFICATION

The 21st September, 2021

**No. SEC-SAM-ET-2021/5203.**—In pursuance of the provisions of Section 92 of the Punjab State Election Commission Act, 1994 (Punjab Act No. 19 of 1994), the Election Commission hereby notifies the order of the Election Tribunal for general information.

**BEFORE SH. A.S. SHARMA PCS, ELECTION TRIBUNAL -CUM- SUB DIVISIONAL  
MAGISTRATE AMLOH**

Election Petition No. 02 of 2021

Harjinder Singh,

... Petitioner

Versus

Returning Officer, Municipal Council Gobindgarh & Ors.

.....Respondents

**Election Petition under Section 74 & 75 of the Punjab State Election Commission Act, 1994**

Present: Mr. Anil Mehta, Advocate, Mr. Tejwant Singh Advocate.

with Mr. Simranjit Singh Sidhu, Advocate for petitioner.

Sh. Amrik Singh Billing, Advocate with Sh. Bikramjeet Singh Randhawa for respondent no.2.

Sh. Naveen Verma, Advocate for respondent no.3.

#### ORDER:

The case of election petitioner may, in brief, be set out as under:

- (1) That the election petitioner S. Harjinder Singh (Petitioner) had contested election held on 14.02.2021 from ward No.29 of the Mandi Gobindgarh Municipal Council on the ticket of Indian National Congress against S. Raghubir Singh (Respondent No.2) from the same ward.
- (2) That it is alleged that Respondent No.2 has provided false information in the nomination paper filed by him to contest the election which were liable to be rejected at the outset for concealing the true information.
- (3) That in reply to a RTI application by the petitioner, the PIO Municipal Council Mandi Gobindgarh has revealed that the water connection to the house to Respondent No.2 is illegal and that a notice has also

been issued to the Respondent No.2 dated 08-09-2020 to deposit Rs.15,220/-, but the Respondent has defaulted in depositing the asked amount.

- (4) That the Respondent No.2 obtained a frivolous no-dues certificate and has concealed true facts while filing nomination papers
- (5) That Respondent No.2 has indulged in corrupt practice and therefore the candidature be declared void.

That upon institution of the election petition, notices were issued to the respondents. That another application was moved by the petitioner to implead EO, Municipal Council Mandi Gobindgarh as party to the case which was allowed by this tribunal.

The Respondent No.2 appealed before the Hon'ble Punjab and Haryana High Court in CWP No.11198 of 2021 and 11205 of 2021 challenging the orders of this tribunal for allowing the application to make EO Municipal Council Mandi Gobindgarh as party to the Election Petition and secondly to transfer the case to some other Election Tribunal and the Hon'ble High Court dismissed both the petitions with the observations:

CWP 11198 of 2021: Reghubir V/S State of Punjab & Ors.

*"The petitioner is seeking quashing of order dated 04.05.2021 (Annexure P-6) whereby respondent No.2, while accepting application filed by private respondent-Harjinder Singh had impleaded Executive Officer, Municipal Council, Mandi Gobindgarh as necessary party in the Election Petition. The petitioner is also seeking writ of mandamus to transfer the Election Petition dated 23.03.2021 (Annexure P-3) to any other competent court of jurisdiction on the ground that the Returning Officer who is impleaded as respondent No.1 in the Election Petition, is the SDM who had conducted the election. He was the Presiding Officer and is a party in the litigation (Election Petition) and he cannot be a judge in his own cause. Mr. Avneesh Mittal, learned counsel for the petitioner has argued that elections for Municipal Council, Mandi Gobindgarh, Amlah, District Fatehgarh Sahib were conducted on 14.02.2021 and as per the certificate dated 17.02.2021 (Annexure P-2), petitioner was elected from ward No. 29 of Municipal Council, Mandi Gobindgarh. Respondent No. 5-Harjinder Singh filed an Election Petition (Annexure P-3) before the Election Tribunal and during the pendency of Election Petition, he filed an application dated 04.05.2021 (Annexure P-5) to implead the Executive Officer, Municipal Council, Mandi Gobindgarh. The grievance of learned counsel for the petitioner is that without issuing notice to the petitioner, impleadment application has been allowed vide impugned order dated 04.05.2021 (Annexure P-6). As far as ground for setting aside the order dated 04.05.2021 (Annexure P-6) is concerned, reference can be made at the outset to the provisions of Order 1 Rule 10(2) CPC which are reproduced as under:- "Court may strike out or add parties:-The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added." Further Section 81 of the Punjab State Election Commission Act 1994 (for short, Act 1994), is reproduced as under:- 81. Procedure before the Election Tribunal— (1) Subject to the provisions of this Act and of the rules made thereunder, every election petition shall be tried by the Election Tribunal, as nearly as may be, in accordance with the procedure contained in the Code of Civil Procedure, 1908, (Central Act 5 of 1908) to the trial of suits: Provided that the Election Tribunal shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the election petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings of the election petition (2) The provisions of*

*the Indian Evidence Act, 1872 (Central Act 1 of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition. As per Section 81 of the Act 1994, the Election Tribunal while entertaining Election Petition, has to follow the principles of Code of Civil Procedure. Hence as per Order 1 Rule 10(2) CPC, the Court on its own motion can also implead party necessary in a civil suit. Even if in the present case, notice was not given to the present petitioner, who was respondent No.2 in the Election Petition, application for impleading the Executive Officer, Municipal Council, Mandi Gobindgarh could have been allowed suo moto by Election Tribunal. Moreover, the Executive Officer, Municipal Council, Mandi Gobindgarh had assisted the Returning Officer in the entire election process since he was having custody of relevant record. Hence, no ground to interfere in the impugned order dated 04.05.2021 (Annexure P-6) is made out. Writ petition is dismissed."*

CWP 11205 of 2021: Reghubir V/S State of Punjab & Ors.

*"The petitioner is seeking direction for transferring the Election Petition dated 23.03.2021 (Annexure P-3) to any other competent court of jurisdiction. Mr. Avneesh Mittal, learned counsel for the petitioner has argued that elections for Municipal Council, Mandi Gobindgarh, Amlah, District Fatehgarh Sahib were conducted on 14.02.2021 and as per the certificate dated 17.02.2021 (Annexure P-2), petitioner was elected from ward No. 29 of Municipal Council, Mandi Gobindgarh. Respondent No. 5—Harjinder Singh filed an Election Petition (Annexure P-3) before the Election Tribunal and during the pendency of Election Petition, he filed an application dated 04.05.2021 (Annexure P-5) to implead the Executive Officer, Municipal Council, Mandi Gobindgarh. The grievance of learned counsel for the petitioner is that without issuing notice to the petitioner, impleadment application has been allowed vide impugned order dated 04.05.2021 (Annexure P-6). He further argued that as per the notification dated 03.06.2019 (Annexure P-1), Sub Divisional Magistrates were appointed as Presiding Officers to conduct elections for Municipal Councils in the entire State of Punjab. In the present case, respondent No.1-Sub Divisional Magistrate was the Returning Officer of the elections in which the petitioner was declared as elected as per the certificate dated 17.02.2021 (Annexure P-2) issued by Returning Officer. Heard learned counsel for the parties. For the purpose of getting Election Petition transferred, the only ground taken by learned counsel for the petitioner is that the Presiding Officer cannot examine the election process which was conducted by him. In the present case, the Govt. of Punjab, Department of Elections, had issued notification dated 03.06.2019 (Annexure P-1) whereby all the Sub Divisional Magistrates were appointed as Presiding Officers for the elections of Municipal Councils, while exercising powers conferred by sub-section (2) of Section 73 of the Punjab State Election Commission Act, 1994 and because the Returning Officer himself had conducted the election, cannot be made a ground to transfer the Election Petition from his court to some other court. With regard to the allegations as set out in the Election Petition, the respondents had to lead evidence to show that the present petitioner had concealed the material facts while filing his nomination papers. Respondent No.1-Presiding Officer has to examine the evidence led by both the parties and since the notification dated 03.06.2019 (Annexure P-1) is not the subject matter of challenge, appointment of respondent No. 1 as 2 of Presiding Officer is not liable to be interfered by this Court, writ petition is dismissed accordingly. Further, there are no malafides attributed to respondent No. 1 in the Election Petition."*

That the Respondent No.2 submitted his reply denying all the averments made in the election petition to which a re-joinder was filed by the petitioner.

That Respondent N.3, EO Municipal Council Mandi Gobindgarh filed his reply before the Tribunal and admitted to the fact that Respondent No.2 has filed to deposit Rs.15,220/- due towards Municipal Council Mandi Gobindgarh and that Respondent No.2 has submitted a wrong declaration to the EO Municipal Council and that

RTI has already been given to the Petitioner which is a part of this petition.

Subsequently Respondent No.2 filed another application seeking dismissal of the petition for non-compliance of mandatory provisions of the Punjab State Election Commission Act to which a reply was filed by the petitioner.

All the parties were given opportunity to submit reply and rejoinders and subsequently issues were framed and arguments heard.

Issues framed for adjudication as per Order XIV of CPC:

1. Would the Election Petition be barred on the grounds of non-following of filing procedure?
2. Did the respondent have outstanding dues on the last date on nomination/scrutiny which he wilfully defaulted?
3. Did the respondent get a frivolous No-dues certificate issued from Municipal Council Mandi Gobindgarh?
4. Did the respondent file wrong information in the affidavit/nomination papers?
5. Is the respondent disqualified under Punjab State Election Commission Act 1994 read with Punjab Municipal Election Rules?

The Respondent No.2 has brought out procedural lapses while filing of the Election Petition and also submitted an application for dismissal of the Election Petition on the same grounds. During arguments the Ld. Council of all parties were given an opportunity and as such placed various authorities of the Hon'ble Supreme Court of India as well as our Hon'ble Punjab and Haryana High Court.

My Lords in various cases has stressed that:

*If the word "shall" used in this expression is construed as mandatory, non-compliance of which nullifies the deposition, drastic consequence of miscarriage of justice would ensue even where omission of the witness' signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word "shall" used in this expression is treated as directory, the court will have power to prevent miscarriage of justice where the omission does not cause any prejudice and the defect is only technical. The object of the provision being merely to obtain acceptance of the witness to the correctness of the deposition, that object would be advanced by taking this view and thereby empowering the court to avoid the drastic consequence of nullifying the deposition where the correctness and authenticity is undisputed. In a case where the correctness has been disputed, it would be permissible for the court to examine the effect of omission of the witness' signature and to reject the deposition only if it does not accept the correctness and authenticity thereof on the available material. (Karnal Improvement Trust v. Parkash Wanti, (1995) 5 SCC 159, [DB]) from the following passage in Statutory Interpretation by Francis Bennion, Second Edition, Part I, Section 10 page 34:*

*"Even where the duty is mandatory, the Court will not now-a-days hold it to be contravened because of a purely formal or technical defect. This may be described as a defect that does not materially impair the remedy intended to be provided by the enactment for the mischief to which it is directed."*

P.T. Rajan v. T.P.M. Sahir, (2003) 8 SCC 498, [3 J.B.]

*A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.*

Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272, [5 J. CONSTI. BENCH]

*With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and*

*advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. ...*

N. Balaji v. Virendra Singh, (2004) 8 SCC 312, [3 J.B.]

*In the matter of applicability of the procedural rigours the Constitution Bench of this Court in Sardar Amarjit Singh Kalra v. Pramod Gupta, [(2003) 3 SCC 272] has observed that laws of procedure are meant to regulate effectively, assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizen under personal, property and other laws. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. It follows from the decision by the Constitution Bench that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice. ...*

Kailash v. Nanhku, (2005) 4 SCC 480, [3 J.B.]

*All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6) “The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer.*

Thus First Issue is decided against Respondent No.2 as no amount of mandatory compliance can be made a shield to cover up for hiding of information and filing wrong affidavit.

The reply of the Executive Officer Municipal Council Mandi Gobindgarh was taken on record and a copy of the same was supplied to the petitioner and Respondent No.2.

The Executive Officer Municipal Council Mandi Gobindgarh in his reply in para no.2 has stated that:

“Para No.2 of the petition is correct. The Respondent No.2 has submitted a wrong declaration with the answering respondent by giving wrong information to the answering respondent. The answering respondent has issued NOC to respondent no.2 on the basis of declaration given by respondent no.2. It was the duty of respondent No.2 to give declaration on the correct information to the answering respondent, but respondent No.2 failed to do so. Later on, it was found that at House No.44, Sector 10-B, there is water connection No.5178 and sewerage connection No.2888 is running. The water connection in the said house is illegal and regarding the same, the office has issued Notice No.1174 dated 08.09.2020 to deposit the necessary fee of Rs.15,220/- but the respondent No.2 has failed to deposit the same. The respondent No.2 has got issued wrong NOC from the answering respondent.”

Curiously, the Respondent No.2 instead of filing a reply/rejoinder to the submissions made by EO Municipal Council Mandi Gobindgarh, went on to file an application for dismissal of the Election Petition and then later on to get the case transferred before the Hon’ble Punjab and Haryana High Court which was dismissed by the Hon’ble High Court. Not even a single reply has been filed by Respondent No.2 against the facts mentioned by the Executive Officer in his reply.

Since, respondent No.2 has not even rebutted the reply of Executive Officer Municipal Council Mandi Gobindgarh and neither has the genuineness of documents been challenged by the Respondent No.2.

It is well known that “Proof” is the fact or result of evidence; while evidence is the medium of proof.

The Indian Evidence Act 1872, section 79 and 80 clearly postulates as to presumption of truth attached to documents produced as record of evidence. It is not even the case of Respondent No.2 that the documents are not-genuine or not issued in good faith. This tribunal finds it hard to believe that Respondent No.2 was not in know how of the outstanding amount especially when Respondent No.3 has issued demand notice also.

Thus, issue no.2 and 3 are also decided against Respondent No.2.

Issue 4 is a natural corollary to decision on issue no. 2 and 3 as the outstanding amount has been shown as nil in the affidavit by Respondent No.2.

To decide issue No.5 it is important to look into judicial interpretation if non-disclosure/incorrect filing of information in nomination papers amounts to corrupt practice.

“In Krishnamoorthy v. Sivakumar & Ors (February 6, 2015), the issue before the SC was whether non-disclosure of criminal antecedents by a candidate in his affidavit amounts to corrupt practice under Section 260 of Tamil Nadu Panchayats Act (which is similar to section 123(2) of RPA). The court ruled that the voter’s right to know the candidate who represents him in Parliament is an integral part of his freedom of speech and expression, guaranteed under the Constitution. Suppressing information about any criminal antecedents creates an impediment to the free exercise of the right to freedom of speech and expression. Therefore, non-disclosure amounts to an undue influence and corrupt practice under Section 123(2) of RPA.

A similar question came up before the SC in Lok Prahari v. Union of India & Ors (February 16, 2018), wherein the court followed the Krishnamoorthy judgment. It held that non-disclosure of information relating to source of income and assets by candidates and their associates, is a corrupt practice. The court laid emphasis on the following paragraph from Krishnamoorthy: “While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice.”

Thus, issue No.5 is also decided against Respondent No.2.

The Respondent No.2 stands disqualified as Municipal Councillor from Ward No.29 of the Municipal Council Mandi Gobindgarh.

Let a copy of the order be sent to Punjab State Election Commission as per provision of Section 92 of Punjab State Election Commission Act, 1994.

Dated: 9-7-2021

Sd/-  
**A.S. SHARMA, PCS**  
Election Tribunal  
Amloh.